

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ASSA ABLOY AB, ASSA ABLOY INC.,  
ASSA ABLOY RESIDENTIAL GROUP, INC., AUGUST HOME, INC.,  
HID GLOBAL CORPORATION, and  
ASSA ABLOY GLOBAL SOLUTIONS, INC.,  
Petitioner,

v.

CPC PATENT TECHNOLOGIES PTY, LTD.,  
Patent Owner.

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IPR2022-01006  
Patent 9,665,705 B2

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Before SCOTT A. DANIELS, BARRY L. GROSSMAN, and  
AMBER L. HAGY, *Administrative Patent Judges*.

GROSSMAN, *Administrative Patent Judge*.

CORRECTED DECISION  
Granting Institution of *Inter Partes* Review  
35 U.S.C. § 314

## I. INTRODUCTION

### A. *Background and Summary*

ASSA ABLOY AB, ASSA ABLOY Inc., ASSA ABLOY Residential Group, Inc., August Home, Inc., HID Global Corporation, and ASSA ABLOY Global Solutions, Inc. (collectively “Petitioner”<sup>1</sup>) filed a Petition requesting *inter partes* review of claims 1–17 (the “challenged claims”) of U.S. Patent No. 9,665,705 B2 (Ex. 1001, “the ’705 patent”). Paper 2 (“Pet.”), 1, 4. CPC Patent Technologies Pty Ltd. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 9 (Prelim. Resp.”). With our authorization to address Patent Owner’s arguments that the Petition is time-barred under 35 USC § 315(b) (*see* Paper 16), Petitioner filed a Reply (Paper 18 (“Prelim. Reply”)); and Patent Owner filed a Sur-Reply (Paper 20 (“Sur-Reply”)).

The parties filed a Joint Request for Rehearing. Paper 25 (“Jnt. Req. Reh’g.”) asserting two errors in the Decision to Institute. We denied the Joint Request for Rehearing (Paper 26) because correction of the identified errors does not change our decision to institute this IPR proceeding. Thus, we are not modifying our decision. We are, however, correcting the two errors noted by the parties, which involve confusion between two different

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<sup>1</sup> *See Cradlepoint, Inc. et al v. 3G Licensing S.A.*, IPR2021-00639, Paper 12, 2 (PTAB May 13, 2021) (“[F]or each ‘petition’ there is but a single party filing the petition, no matter how many companies are listed as petitioner or petitioners and how many companies are identified as real parties-in-interest. . . . Even though the separate sub-entities regard and identify themselves as ‘Petitioners,’ before the Board they constitute and stand in the shoes of a single ‘Petitioner. . . . they must speak with a single voice, in both written and oral representation.”).

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“Mathiassen” references, in two different, but related IPR proceedings.  
*See Papers 25, 26.*

We have authority to determine whether to institute an *inter partes* review. 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2022) (permitting the Board to institute trial on behalf of the Director). To institute an *inter partes* review, we must determine that the information presented in the petition, any preliminary response, or other pre-institution briefing shows “a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a). “The ‘reasonable likelihood’ standard is a somewhat flexible standard that allows the Board room to exercise judgment.” Patent Trial and Appeal Board Consolidated Trial Practice Guide, 53 (Nov. 2019) (“TPG”).<sup>2</sup>

Petitioner has the burden of proof. Petitioner’s burden does not change even if Patent Owner does not file a preliminary response, or files a preliminary response without addressing the substantive unpatentability assertions. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“In an [*inter partes* review], the petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”). This burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

A decision to institute is “a simple yes-or-no institution choice respecting a petition, embracing all challenges included in the petition.” *PGS Geophysical AS v. Iancu*, 891 F.3d 1354, 1360 (Fed. Cir. 2018). For

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<sup>2</sup> The TPG is available at <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>.

the reasons set forth below, we determine that Petitioner has demonstrated that there is a reasonable likelihood that at least one of the challenged claims is unpatentable. Accordingly, we institute an *inter partes* review of all challenged claims and on all grounds asserted in the Petition.

We also note that this Corrected Decision to Institute does not change the original Scheduling Order, Paper 24, issued in this proceeding.

*B. Real Parties-in-Interest*

Petitioner identifies “ASSA ABLOY AB, ASSA ABLOY Inc. and its wholly owned subsidiaries ASSA ABLOY Residential Group, Inc., August Home, Inc., HID Global Corporation, and ASSA ABLOY Global Solutions, Inc.” as the real parties-in-interest. Pet. 1. Petitioner also states “ASSA ABLOY AB is the ultimate parent of all parties-in-interest.” *Id.*

Patent Owner identifies itself as the sole real party-in-interest. Paper 5, 2.

The entirety of Patent Owner’s Preliminary Response is devoted to the issue of whether “the Petition is time-barred under 35 U.S.C. § 315(b) because Apple, Inc. (‘Apple’) is a real party in interest (‘RPI’) or privy, and Patent Owner served a complaint on Apple alleging infringement of the ’705 Patent more than 1 year before this Petition was filed.” *See, e.g.,* Prelim. Resp. 1. We address this issue in Section II of this Decision.

*C. Related Matters*

Petitioner identifies the following matters as being related to this proceeding:

- 1) *ASSA ABLOY AB, et al. v. CPC Patent Technologies Pty Ltd., et al.*, No. 3-22-cv-00694 (D. Conn.);

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- 2) *CPC Patent Technologies Pty Ltd v. HMD Global Oy*,<sup>3</sup>  
WDTX-6-21-cv-00166-ADA (W.D. Tex.);
- 3) *CPC Patent Technologies Pty Ltd v. Apple Inc.*,  
No. 5:22-cv-02553-NC (N.D. Cal); and
- 4) IPR2022-00602 and IPR2022-00601, identified as pending IPR challenges filed by Apple against, respectively, the '705 patent and related U.S. Patent No. 9,269,208 (the "'208 patent").<sup>4</sup>

Pet. 1–2.

Petitioner also informs us that it has filed “two petitions (IPR2022-01045 and -01089) challenging the claims of” the related '208 patent.

Pet. 1.

Patent Owner identifies the above matters as related to the present IPR proceeding. Paper 5, 2. Patent Owner further identifies the following IPR proceedings: IPR2022-00600; IPR2022-01093; and IPR2022-01094. *Id.* at 2–3.

#### *D. The '705 Patent*

The '705 patent discloses a system “for providing secure access to a controlled item.” Ex. 1001, Abstr. The “controlled item” can be, for example, the locking mechanism of a door or an electronic lock on a personal computer. *Id.* at 1:43–46.<sup>5</sup> The system uses a database of

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<sup>3</sup> Petitioner states HID Global, one of the named Petitioners in this IPR proceeding, and HMD Global, the named defendant in the cited litigation, “have no relation to one another.” Pet. 2, fn 2.

<sup>4</sup> The '705 patent is a “[c]ontinuation of application No. 13/572,166, filed on Aug. 10, 2012, now Pat. No. 9,269,208.” Ex. 1001 code (63).

<sup>5</sup> Citations are to column:line[s] of the '705 patent.

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